

BACKGROUND DOCUMENT

RESOURCE CONSERVATION AND RECOVERY ACT
SUBTITLE C - HAZARDOUS WASTE MANAGEMENT

40 CFR PART 260

DEFINITIONS

AND

PROVISIONS FOR CONFIDENTIALITY

U.S. ENVIRONMENTAL PROTECTION AGENCY

OFFICE OF SOLID WASTE

APRIL 29, 1980

INTRODUCTION

The final Part 260 rules include all of the "definitions" pertaining to activities subject to control under Sections 3001 through 3004 of RCRA. In addition to these definitions, Part 260 also contains other provisions which are generally applicable to these activities. These provisions include: (1) regulations concerning the designation and handling of confidential information submitted to the Agency in accordance with the RCRA Sections 3001 through 3004 standards, (2) general procedures which the Agency will follow when acting on petitions to amend these standards, (3) special procedures applicable to petitions for the approval of equivalent testing and analytical methods and petitions to amend the Section 3001 standards, and (4) rules of grammatical construction which are generally applicable to the Sections 3001 through 3004 standards.

In issuing its proposed rules for hazardous waste in accordance with Sections 3001 through 3004 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (RCRA) of 1976, the Environmental Protection Agency (EPA) published four discrete sets of rules corresponding to each of the four sections of RCRA. It was the Agency's intent that each of these sets of rules be self-contained so that people conducting activities regulated under one of these sections of RCRA need only look at one set of rules to determine which standards apply to his activities. In EPA's proposed regulations, each regulation had its own set of definitions (see §§250.11, 250.21, 250.31, and 250.41). To eliminate the unnecessary repetition this produced,

the Agency has placed them in Part 260.

Except for the definitions and the provisions for confidentiality, the Part 260 rules are self-explanatory, and require no further description other than that contained in the preamble which accompanies these rules. For this reason, this background document deals with only two aspects of the Part 260 rules: the definitions contained in Subpart B, and the provisions for confidentiality contained in §260.2 of Subpart A.

PART I

§260.10 DEFINITIONS

Proposed definitions of key terms used in the Section 3003 rules were published in the Federal Register on April 28, 1978 (43 FR 18510-1). The proposed definitions of key terms used in the Sections 3001, 3002, and 3004 rules were published in the Federal Register on December 18, 1978 (43 FR 58955, 58976-7, and 58996-9). Collectively, the Sections 3001 through 3004 rules contained 130 proposed definitions.

In response to comments received on the proposed definitions, and because of changes made to the regulations themselves, many of the final definitions have been modified considerably from their proposed form. Others have remained substantively the same. Still others have been deleted from the final rules. Some new definitions are now also required.

The Agency is deferring discussion of some of these 130 definitions until the regulations in which they are used are promulgated in either the Phase II or III final rules. For example, the definitions used in the proposed §250.43-1 "General Site Selection" standards will not be discussed until the background document supporting the final Phase II site selection standards is issued.

Table I of this document summarizes the status of the 130 proposed definitions and the 32 definitions which have been added to the final rules. For each definition, the table indicates whether (1) the definition is deleted from the final rules, or (2) discussion of the definition is deferred until the Phase II

or III rules are promulgated, or (3) the definition is being promulgated in the Phase I final rules. The table also identifies where each definition is discussed. Some of them are discussed in preamble sections and background documents related to the sections of the final rules where they are used. Definitions of more general interest are discussed in this document.

TABLE I

Proposed and New Subtitle C Definitions

Please note: New definitions are underlined.
 "h.w." means hazardous waste.

<u>Term</u>	<u>Deleted</u>	<u>Deferred</u>	<u>Promul- gated</u>	<u>Background Document and/or preamble in which the term is discussed</u>
Act or RCRA			X	260/B
Active fault zone		X		
Active portion			X	260/B
Administrator			X	260/B
Annular space	X			265/F
Aquifer			X	265/F
<u>Authorized repre- sentative</u>			X	45 FR 12722
Attenuation			X	265/M
Basin	X			265/J
Cell	X			265/N
Chemical fixation		X		
Close-out	X			265/G
Closed portion			X	265/G
Closing date	X			260/B
Closure	X			265/G
Closure procedures	X			265/G
Coastal high hazard area		X		
Combustion zone		X		
Common code				260/B; 262/A-5
<u>Confined aquifer</u>			X	122/A

TABLE I (cont.)

<u>Term</u>	<u>Deleted</u>	<u>Deferred</u>	<u>Promul- gated</u>	<u>Background Document and/or preamble in which the term is discussed</u>
<u>Constituent or h.w. consti- tuent</u>			X	260/B
Container			X	265/I
Contamination	X			260/B
Contingency plan			X	264(5)/D
Cover material	X			265/N
Delivery document	X			260/B
<u>Designated facility</u>			X	260/B
Dike			X	265/K
Direct contact		X		
<u>Discharge or h.w. discharge</u>			X	263/M (45 FR 12723)
Disposal			X	260/B
Disposal facility			X	260/B
Endangerment	X			265/F
EPA	X			260/B
<u>EPA hazardous waste number</u>			X	261/D
<u>EPA identification number</u>			X	260/B
EPA Region			X	260/B
Equivalent method			X	260/B
<u>Existing h.w. manage- ment facility or existing facility</u>			X	260/B

TABLE I (cont.)

<u>Term</u>	<u>Deleted</u>	<u>Deferred</u>	<u>Promul- gated</u>	<u>Background Document and/or preamble in which the term is discussed</u>
Facility			X	260/B
Farm	X			260/B
Farmer	X			260/B
Federal agency			X	260/B
Fertilizer	X			265/M
Final cover	X			265/N
Five-hundred-year flood		X		
Flash point		X		
Food-chain crops			X	265/M
Floodplain		X		
Freeboard			X	260/B
<u>Free liquids</u>			X	265/N
Fugitive emissions		X		
Generator			X	260/B
Ground water			X	265/F
Hazardous material	X			260/B
Hazardous waste			X	261/A (§261.3)
Hazardous waste facility personnel	X			264(5)/B (§264(5).16)
Hazardous waste landfill	X			265/N
Hazardous waste management			X	260/B
Household refuse	X			261/A (§261.2)
Hydraulic gradient	X			265/F

TABLE I (cont.)

<u>Term</u>	<u>Deleted</u>	<u>Deferred</u>	<u>Promul- gated</u>	<u>Background Document and/or preamble in which the term is discussed</u>
Identification code	X			260/B
<u>Inactive portion</u>			X	260/B
Incinerator			X	265/O
Incompatible waste			X	260/B
<u>Individual generation site</u>			X	261/B
<u>In operation</u>			X	260/B
<u>Injection well</u>			X	122/A
<u>Inner liner</u>			X	265/J
International ship- ment			X	260/B
Interregional ship- ment		X		
Intraregional ship- ment		X		
Landfarming of a waste	X			265/M
Landfill			X	265/N
Landfill cell			X	265/N
<u>Land treatment facility</u>			X	265/M
Leachate			X	265/N
Leachate collection and removal system		X		
Leachate detection system		X		
Leachate detection and removal system		X		
Leachate monitoring system	X			265/F

TABLE I (cont.)

<u>Term</u>	<u>Deleted</u>	<u>Deferred</u>	<u>Promul- gated</u>	<u>Background Document and/or preamble in which the term is discussed</u>
Liner			X	265/N
<u>Management</u> or h.w. management			X	260/B
Manifest			X	260/B (45 FR 12723)
Manifest document number			X	260/B
<u>Mining overburden returned to the mine site</u>			X	261/A (§261.4)
Mode			X	260/B
Monitoring	X			260/B
Monitoring well	X			265/F
Motor vehicle	X			260/B
<u>Movement</u>			X	264/(5)/B (§264(5).13)
Navigable waters		X		
<u>New h.w. management facility or new facility</u>			X	260/B
On-site			X	262/J (45 FR 12723)
Open burning			X	265/P
Open dump	X			260/B
<u>Operator</u>			X	260/B
<u>Owner</u>			X	260/B
Owner/operator	X			260/B
Package or outside package	X			260/B
Packaging	X			260/B

TABLE I (cont.)

<u>Term</u>	<u>Deleted</u>	<u>Deferred</u>	<u>Promul- gated</u>	<u>Background Document and/or preamble in which the term is discussed</u>
<u>Partial closure</u>			X	265/G
Partial closure procedures	X			265/G
Permitted h.w. management facil- ity or permitted facility	X			260/B
Person			X	260/B (45 FR 12723)
<u>Personnel or facility personnel</u>			X	264(5)/B (§264(5).16)
<u>Pile</u>			X	265/L
Point source			X	260/B
Post-closure care	X			265/G
Publicly owned treat- ment works or POTW			X	260/B
Reactive hazardous waste	X			260/B
Recharge zone		X		
Regional Administrator			X	260/B
Regulatory floodway		X		
Reporting quarter	X			260/B
Reporting year	X			260/B
Representative sample			X	260/B
Retailer	X			261/A (§261.2)
Retention time	X			265/O
Run-off			X	265/N
<u>Run-on</u>			X	265/N

TABLE I (cont.)

<u>Term</u>	<u>Deleted</u>	<u>Deferred</u>	<u>Promul- gated</u>	<u>Background Document and/or preamble in which the term is discussed</u>
Sanitary landfill	X			260/B
Saturated zone (zone of saturation)			X	265/F
Scavenging	X			260/B
Secondary container	X			260/B
Sludge			X	261/A (§261.2)
Spill	X			263/M (45 FR 12723)
Soil barrier		X		
Soil conditioner	X			265/M
Sole source aquifers		X		
Solid waste			X	261/A (§261.2)
Solid waste manage- ment	X			260/B
Solid waste manage- ment facility	X			260/B
State			X	260/B
Storage			X	265/I
Storage facility	X			260/B
Storage tank	X			265/J
Surface impoundment			X	265/K
<u>Tank</u>			X	265/J
<u>Thermal treatment</u>			X	265/P
<u>Totally enclosed treatment facility</u>			X	265/J
Training	X			264(5)/B (§264(5).16)
<u>Transportation</u>			X	260/B (45 FR 12722)

TABLE I (cont.)

<u>Term</u>	<u>Deleted</u>	<u>Deferred</u>	<u>Promul- gated</u>	<u>Background Document and/or preamble in which the term is discussed</u>
Transporter			X	260/B
Transport vehicle	X			260/B
Treated area of a landfarm			X	265/M
Treatment			X	265/J
Treatment facility	X			260/B
Triple rinsed			X	261/D (§261.33)
True vapor pressure		X		
24-hour, 25-year storm		X		
<u>Underground injection</u>			X	122/A
Unsaturated zone (zone of aeration)			X	265/F
United States			X	260/B
Underground drinking water source (UDWS)		X		
Underground non- drinking water source		X		
Vapor recovery system		X		
Volatile waste		X		
<u>Water (bulk shipment)</u>			X	260/B (45 FR 12723)
Water table	X			265/F
<u>Well</u>			X	122/A
<u>Well injection</u>			X	122/A
Wetlands		X		
Zone of incorporation	X			265/M

The Proposed Definitions

The proposed definitions that have not been deferred or discussed in other background documents or preamble sections are presented next. The presentation will generally consist of:

- (1) the proposed definition(s),
- (2) the Section(s) of the proposed rules in which the definition was issued,
- (3) a summary of the substantive comments (if any) received on the proposed definition,
- (4) a response to comments (except in those cases where a proposed term has been deleted from the final rules and responding to the particular points raised by the commenters would be irrelevant),
- (5) the rationale for modifications made to the proposed definition resulting from changes made either in the proposed rules or in a related EPA policy, and
- (6) the final definition or other information concerning the final disposition of the definition.

For the following 18 proposed definitions, no presentation is necessary for the reasons indicated below:

A. No substantative comments were received on the following definitions issued in the proposed Section 3004 rules. The Agency is deleting these terms because they are not used in the final rules:

Closing date	Sanitary landfill
Common code	Scavenging
Open dump	Secondary container
Reporting quarter	Solid waste management
Reporting year	Solid waste management facility

* * *

B. No comments were received on the following definitions issued in the proposed Subtitle C rules. They have not been changed in the final rules and, therefore, are defined in Part 260 in their proposed form.

Act	Management or hazardous waste management
EPA Region	Mode
Equivalent Method	State
Federal Agency	United States

ACTIVE PORTION

A. Proposed Definition [Section 3004]:

"Active portion" means that portion of a facility where treatment, storage, or disposal operations are being conducted. It includes the treated area of a landfarm and the active face of a landfill, but does not include those portions of a facility which have been closed in accordance with the facility closure plan and all applicable closure standards.

B. Summary of Comments:

1. The definition should be reworded to make it clear that portions of facilities -- including those portions not closed in accordance with the proposed closure requirements -- closed prior to the effective date of the regulations are not active:
 - to clarify that previously closed portions will not have to be closed again in accordance with the closure requirements. Otherwise, owners or operators may close their entire facilities to avoid the cost of upgrading those portions of their facilities which have already been closed.
 - because the proposed definition is inconsistent with Congress' intent to apply RCRA regulations only to the future treatment, storage, or disposal of hazardous waste.
2. The definition of "active portion" is inappropriate for facilities which dispose of utility waste in strip mines because the Office of Surface Mining's closure requirements would then be inconsistent with those of EPA for these facilities.

OWNER OR OPERATOR

A. Proposed Definition [Section 3004]:

"Owner/operator" means the person who owns the land on which a facility is located and/or the person who is responsible for the overall operations of the facility.

B. Summary of Comments:

1. The definitions and responsibilities of owners and of operators should be distinguished and delineated separately because:
 - the complexities of some ownership and operator relationships may make it difficult or contractually impossible for both the owner and the operator to jointly comply with all of the requirements.
 - the owner of the facility, or the land on which the facility is built, often has nothing to do with the operation of the facility, and therefore, should not be subject to the regulations.
2. The person owning the land should not be included in the definition of owner/operator because the Act specifically indicates that the permit requirements of Section 3005(a) of RCRA apply to persons owning or operating a facility, not the land on which the facility is located. The proposed definition is inappropriate because it indicates that an absentee owner of land, who has leased the land to a person who constructs and operates a facility, could be held responsible for the operation of the facility

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despite a legally binding contractual agreement to the contrary.

3. Because the owner or operator may not be physically on-site at all times, the language "owner/operator" of some of the standards (e.g., the visual inspection requirements) should be changed to "owner/operator or responsible designee(s)".
4. The Section 3002 definition of "generator" should be combined with the Section 3004 definition of "owner/operator".

C. Analysis of and Response to Comments

1. The Agency agrees that the definitions of "owner" and "operator" should be separate, but not for the reasons given by the commenters.

Although for most of the proposed and final requirements, the tasks that must be carried out can be performed by either the owner or the operator, there are a few standards with which only the owner can comply (e.g., recording certain information in the deed to the facility property). In the final rules, responsibility for complying with these standards has been assigned to the owner, and a definition has been added to Part 260 which describes who are owners of facilities.

Responsibility for complying with most of the final standards has been assigned to the "owner or operator".

(A definition has also been added to Part 260 which describes who are operators of facilities.) Owners and operators are jointly and severally responsible for complying with the requirements of these standards. (RCRA's legislative history indicates that this was Congress' intent*.) They are free to decide among themselves who will perform these tasks and, they can draw up a contract which describes the agreed-upon division of labor. If a task is not performed, the Agency may bring enforcement actions against the owner, the operator, or both. If a contract between the owner and operator exists, one of the parties is then free to bring an action against the other for not complying with the terms of the contract.

The Agency rejects the argument that because facility owners often have nothing to do with facility operations they should not be subject to the regulations. The Agency believes that unless facility owners are held accountable for environmental damage resulting from their facilities, unscrupulous facility owners may lease their property to people who will run the facility, for a retainer, in an environmentally unsound manner, reap a quick profit, and abandon the operation. If this were to occur, EPA would have no means to obtain funds from either the owner or the operator to clean up the site. To preclude this

* H.R. Rep. No. 94-1491, 2d. Sess., at 28 (1976).

type of incident, the Agency believes that absentee land owners should be subject to the regulations. Owners must also be subject to RCRA because enforcement actions for equitable relief will necessarily involve the owners.

2. The Agency agrees that the phrase "the person owning the land" should be excluded from the final definition of "owner", but not for the reason given by the commenter. The definition of "facility" includes the land on which the waste management operation (e.g., incinerator) is located, so that the owner(s) of the facility includes the owner of the land. Thus, it is unnecessary to list both types of owners in the definition.

The Act gives EPA the authority to define "facility" as it deems necessary. Because EPA includes the land on which the waste management operation is located in the definition of "facility", the commenter's statement regarding the Section 3005(a) permitting requirements is irrelevant.

3. The Agency believes that it is obvious that owners or operators are not required to personally perform most of the tasks assigned to them, and that they may designate their employees to carry out these tasks. The situation is comparable to requiring people to file tax returns.

Although each person is responsible to file a return, it is generally understood that people may hire tax specialists to file the return for them, even though this is not explicitly stated in the regulations. Similarly, it should be obvious that, although owners or operators are responsible for complying with the regulations, they can assign employees to perform these tasks for them. Therefore, the Agency has not amended the regulations as the commenter suggested.

4. The definitions of "generator" and "owner" or "operator" have not been combined in the final rules because the "owner" or "operator" may not always be the "generator". For example, at a disposal facility, the "operator" is the "disposer", not the "generator".

D. Final Definition:

"Owner" means the person who owns a facility or part of a facility.

"Operator" means the person responsible for the overall operation of a facility.